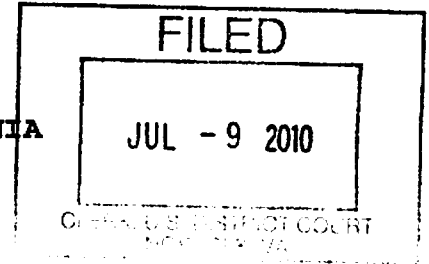


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



DAVID D'ANTE HILL, #367920,

Petitioner,

v.

Case No. 2:09cv383

GENE M. JOHNSON, Director of the  
Virginia Department of Corrections,

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. The petition alleges violations of federal rights pertaining to Petitioner's conviction on October 18, 2006, in the Circuit Court of the City of Hampton, Virginia, for one (1) count of second-degree murder, one (1) count of use of a firearm in the commission of a felony, and one (1) count of possession of a firearm by a convicted felon, as a result of which he was sentenced to serve a total of forty-three (43) years, with seventeen (17) years suspended, in the Virginia penal system.

The matter was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C), Rule 72(b) of the Federal Rules of Civil Procedure, and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation. The report of the magistrate judge was filed on May 28, 2010, recommending dismissal of the petition. By copy of the report, each party was

advised of his right to file written objections to the findings and recommendations made by the magistrate judge. On June 15, 2010, the Court received Petitioner's Written Objections to the Magistrate Judge's Report and Recommendation (Doc. No. 23).<sup>1</sup> The Court received no response from Respondent.

The Court, having reviewed the record and examined the objections filed by Petitioner to the magistrate judge's report, does hereby ADOPT AND APPROVE the findings and recommendations set forth in the report of the United States Magistrate Judge filed on May 28, 2010, and it is, therefore, ORDERED that the petition be DENIED AND DISMISSED as claim (1) is without merit and claim (2) is not cognizable in a federal habeas petition and is procedurally defaulted. Adopting the recommendations in the magistrate judge's report, it is ORDERED that Respondent's Motion to Dismiss (Doc. No. 13) be GRANTED. It is further ORDERED that judgment be entered in favor of Respondent.


Petitioner may appeal from the judgment entered pursuant to this final order by filing a written notice of appeal with the Clerk of this Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment. Petitioner has failed to demonstrate "a

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<sup>1</sup> Specifically, Petitioner objects to the magistrate judge's finding that Petitioner's ineffective assistance of counsel claim did not satisfy the requirements of Strickland v. Washington, 466 U.S. 668, 687 (1984). (Pet'r's Objections to Magistrate's Report & Recommendation 2.)

substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Therefore, the Court, pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure, declines to issue a certificate of appealability. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

  
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Mark S. Davis  
United States District Judge

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UNITED STATES DISTRICT JUDGE

Norfolk, Virginia

July 9 , 2010